In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 425

JOSEPH MATTIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 29, 1967. The petition for a writ of certiorari was filed on July 27, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction for conspiring to transport counterfeit bonds in interstate commerce.

2. Whether the trial court's instructions to the jury were sufficient.

274-013—67

3. Whether petitioner's request for a hearing on a motion to suppress evidence seized from a co-conspirator, who was not on trial, was properly denied.

STATEMENT

After a jury trial in the United States District Court for the District of New Jersey, petitioner was convicted of participating in a conspiracy to transport counterfeit securities in interstate commerce, in violation of 18 U.S.C. 371, 2314 and 2315. On August 25, 1965 he was sentenced to imprisonment for three years and fined $5,000. The court of appeals affirmed (Pet. App. B).

The evidence showed that petitioner's father, Romeo Mattia, owned a printing company in Newark, New Jersey. Petitioner served as general manager, and was in charge of the daily operations of the shop. In September 1961 his company was engaged by co-defendant Leo Sagal[1] to counterfeit a certain series of bonds issued by the General Motors Acceptance Corporation (GMAC), each having a face value of $1,000 and bearing 5% interest (A. 20a).[2] During the next three months petitioner and certain designated

[1] Sagal, charged with conspiracy and three substantive offenses, was scheduled to be tried jointly with petitioner. At the beginning of the trial Sagal was permitted to withdraw his not guilty plea and enter a plea of guilty to the conspiracy count. A motion for severance was then granted (Tr. 4–8).

[2] The three-volume "Appendix to Appellants Brief" ("A."), containing the record in the district court, and including the indictment and most of the transcript of trial ("Tr."), has been filed with the clerk of this Court.

employees[3] worked at the printing shop after normal employment hours to produce the counterfeit bonds (A. 26a–35a). Subsequently, Sagal and other conspirators attempted unsuccessfully to use the bogus securities as collateral for large loans from banks in Miami, Florida (Tr. 145–188), and Los Angeles, California (Tr. 290–420; Tr. 438–448). However, a loan in the amount of $130,000 was successfully negotiated in Toronto, Ontario, on December 29, 1961, with 175 of the counterfeit bonds serving as collateral. In January and February 1962, three loans of approximately $30,000 were obtained from different banks in New York City, each time with 35 of the counterfeit bonds used as collateral (Tr. 480–504). In February 1962, Newark policemen arrested two of petitioner's co-defendants and seized two suitcases containing 1,072 bogus bonds in their possession (A. 165a–176a).

ARGUMENT

1. Petitioner's argument (Pet. 11–14) that, as to him, the evidence was insufficient to support the jury's verdict with respect to the interstate character of the conspiracy, is without substance. In instructing the jury, the trial judge made it clear a number of times that, for a defendant to be liable for the federal crime of conspiracy, it was necessary that the jury find that the conspiracy which he joined contemplated more than forgery; that it had to contemplate the

[3] The printing plant personnel were the only ones of the fourteen named conspirators who were tried with petitioner. His father was acquitted and the others received suspended sentences.

transportation of forged bonds in interstate commerce (A. 1170a–1171a, 1173a, 1176a–1177a). The proximity of Newark, New Jersey, to the massive financial and banking center of New York City, together with the substantial number of counterfeit bonds produced, totalling millions of dollars in face value, fully justify the inference that petitioner knew the bogus securities were not meant solely for use in New Jersey. Moreover, the bonds themselves provided that they were to be paid upon maturity in New York (see Pet. App. 11a). See *Hansen* v. *United States,* 326 F. 2d 152 (C.A. 9). There was no "piling inference upon inference" (Pet. 12); the evidence was plainly sufficient to justify submission of this issue to the jury.

2. After giving his closing charge, the trial judge reviewed the instructions requested by counsel. He rejected as repetitious the following instruction offered by defense counsel (A. 1187a):

> Although one may become a member of a conspiracy without full knowledge of all the details of the conspiracy, a person who has no knowledge of the conspiracy, but happens to act in a way which furthers some object of the conspiracy does not thereby become a conspirator.

As set forth above, the court had already fully explained that transportation across State lines had to be within the contemplation of the conspiracy for a federal crime to exist. In addition, he had, at various points, charged:

> * * * [I]t is never permissible to enlarge the scope of the conspiracy itself by proving that some of the conspirators unknown to the rest

have done what was beyond the reasonable intendment of the common understanding. [A. 1172a–1173a]

* * * * *

One defendant may know but one other member of the conspiracy but if knowing that others have combined to violate the law, a party knowingly cooperates to further the object of the conspiracy, he becomes a party thereto and a fellow conspirator. [A. 1174a]

* * * * *

A person becomes a conspirator when he acts in concert with other members of the conspiracy, knowing the general criminal design and having the purpose of effecting the objects of the conspiracy. [A. 1179a]

* * * * *

If you do find from the evidence that the defendant, Leo Sagal, had some contact with the defendants, or any one of them, the mere fact of that contact is insufficient to establish the requisite knowledge or intent upon the part of the defendants to commit the crime charged since guilt may not be inferred from mere association, and hence the defendants would be entitled to an acquittal. [A. 1187a]

It thus plainly appears that the instructions given amply covered the subject, and that refusal to give the requested charge was not erroneous (see Pet. App. 12a–13a).

3. Before trial the two co-conspirators in whose suitcases forged bonds were found at the time of their arrest had unsuccessfully moved to suppress this evi-

dence (A. 16a). They subsequently pleaded guilty and were severed from the case involving petitioner. When the evidence found in the suitcases was offered at the trial, petitioner, arguing that he should stand in the shoes of his co-conspirators as to the admissibility of this evidence, moved to suppress. No separate hearing was held, and the motion was denied on the ground that petitioner had no standing to object to the seizure (see Pet. 4–6). The issue was neither raised nor considered in the court of appeals.[4]

Except in extraordinary situations, not involved here, this Court has consistently refused to consider issues tendered under these circumstances, where no review in the court below was sought or obtained. *E.g. Lawn* v. *United States,* 355 U.S. 339, 362, n. 16. In any event, the seizure of the two suitcases invaded no right of privacy of petitioner's person or premises which would have entitled him to object to their use in evidence at trial. *Wong Sun* v. *United States,* 371 U.S. 471, 492–493. Accordingly, the district court correctly decided that there was no occasion to conduct a hearing on petitioner's motion to suppress made during the course of the trial.[5]

[4] Petitioner's basic contention in the court below was that the government's evidence was insufficient to sustain the convictions (see Pet. App. 6a).

[5] As petitioner notes (Pet. 4), the earlier motion to suppress made by the two co-conspirators had been denied. Petitioner was not on the premises when the seizure occurred, and had no interest in those premises or materials seized; nor was the search directed against him. See *Jones* v. *United States,* 362 U.S. 257, 261.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
MERVYN HAMBURG,
Attorneys.

AUGUST 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967